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Twenty-ninth session

SUMMARY RECORD OF THE 604th MEETING*

Held at Headquarters, New York,
on Tuesday, 11 June 1996, at 3 p.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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* No summary record was issued for the 603rd meeting.

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The meeting was called to order at 3.20 p.m.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/50/17; A/CN.9/XXIX/CRP.2 and Add.1-5)

1. The CHAIRMAN invited the Commission to resume its consideration of the draft UNCITRAL Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication and drew attention to the revisions proposed by the drafting group, which were contained in documents A/CN.9/XXIX/CRP.2 and Add.1-5.

2. Ms. CRAGGS (United Kingdom) said that the EDI experts who had represented the United Kingdom at previous meetings on the subject were no longer present; consequently, her delegation would need time to consult with its national authorities before it could agree to any further drafting changes.

3. Mr. BURMAN (United States of America) said that the Commission should continue to work together in a spirit of collaboration, in keeping with its usual practice.

Articles 1 to 3 (A/CN.9/XXIX/CRP.2/Add.3)

4. Ms. SABO (Observer for Canada), supported by Mr. ZHANG Yuqing (China), Mr. ABASCAL (Mexico) and Mr. CHOUKRI (Observer for Morocco), said that her delegation had some doubts regarding the new title proposed for Part I of the Model Law, "Electronic commerce in general".

5. Mr. SORIEUL (International Trade Law Branch) said that it would be preferable to adopt the proposed title, which was intended to indicate clearly the scope of application of Part I.

6. Mr. ZHANG Yuqing (China) said that his delegation continued to have reservations concerning the title of Part I.

7. Mr. RENGER (Germany), supported by Mr. MADRID (Spain), said that the footnote to the title of chapter I should apply to the Model Law as a whole and should therefore be moved.

8. The CHAIRMAN suggested that the footnote should be placed after the words "This Law" at the beginning of article 1.

9. It was so decided.

10. Article 1, as amended, was adopted.

11. Ms. BOSS (United States of America) proposed that the word "communicated" in article 2, subparagraph (a), should be changed to "sent or received", as had been done throughout the text of the Model Law. She also questioned whether there had been a consensus in the Commission to change the term "analogous" in the same subparagraph to "similar".

12. Mr. SORIEUL (International Trade Law Branch) agreed that in order to harmonize the text of the Model Law, the word "communicated" in article 2, subparagraph (a), should be changed to "sent or received". Following a somewhat confused debate, the Commission had decided to retain the word "analogous".

13. Mr. BURMAN (United States of America), supported by Mr. ABASCAL (Mexico), said he favoured the term "similar", since it paralleled the term used in the Spanish text. Moreover, the term "analogous" might be confused with the word "analog", which had a specific meaning in electronic commerce.

14. Mr. LLOYD (Australia) supported the proposal to change "communicated" to "sent or received" and said he believed the consensus of the Commission had been to replace the word "analogous" with "similar".

15. The CHAIRMAN said that the consensus of the Commission was to replace "communicated" with "sent or received" and to use "similar" instead of "analogous" in subparagraph (a).

16. Mr. Moon-Chul CHANG (Republic of Korea) proposed that the definition of EDI in article 2, subparagraph (b), should be changed to define the term "electronic commerce", in keeping with the new title of the Model Law.

17. Mr. SORIEUL (International Trade Law Branch) said that the term "electronic commerce" was not equivalent to the term "electronic data interchange", which was a distinct technical term that could not be defined other than as defined in subparagraph (b). It was open to question, however, whether there was a need to include a definition of the term "EDI" in the Model Law, the title of which had been changed to "Model Law on Electronic Commerce".

18. Mr. ABASCAL (Mexico) said that there had been some discussion in the drafting group as to whether a definition of EDI should be retained in subparagraph (b). He favoured deleting the definition, since there was no provision in the Model Law which referred to the concept of EDI.

19. The CHAIRMAN said that there had not been sufficient support for the proposed deletion of the definition of EDI from article 2, subparagraph (b), which would be retained as drafted.

20. Article 2, as amended, was adopted.

21. Article 3 was adopted.

Article 10 (A/CN.9/XXIX/CRP.2/Add.4 and Add.5)

22. Mr. SORIEUL (International Trade Law Branch) said that article 10, entitled "Variation by agreement", should be moved to follow immediately after article 3. The text of paragraph 1 would be amended to read:

> "1. As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement."

The article would be renumbered appropriately.

23. Article 10, as amended, was adopted.

The meeting was suspended at 4.30 p.m. and resumed at 5 p.m.

Article 4 (A/CN.9/XXIX/CRP.2/Add.3)

24. Article 4 was adopted.

Articles 5 to 7 (A/CN.9/XXIX/CRP.2/Add.4)

25. Articles 5 to 7 were adopted.

Articles 8 and 9 (A/CN.9/XXIX/CRP.2/Add.3)

26. Articles 8 and 9 were adopted.

Articles 13 and 13 bis (A/CN.9/XXIX/CRP.2/Add.1)

27. Mr. SORIEUL (International Trade Law Branch) suggested that, in view of the confusion caused by the footnote to articles 13 and 13 bis, the Commission might wish to begin chapter III with those two articles.

28. Ms. BOSS (United States of America) said that since article 10 had been moved to chapter I, there was no reason why articles 13 and 13 bis, which applied only to chapter III, should be moved. Articles 13 and 13 bis should be the first two provisions in chapter III.

29. Mr. RENGER (Germany) endorsed the comments made by the representative of the United States of America.

30. The CHAIRMAN said that, if she heard no objection, she would take it that the Commission wished to make articles 13 and 13 bis the first two articles of chapter III.

31. It was so decided.

32. Mr. SORIEUL (International Trade Law Branch) said that the drafting group had proposed that the expression "legal effectiveness" in article 13 bis, paragraph (1), should be changed to "legal effect".

33. Articles 13 and 13 bis, as amended, were adopted.

Article 11 (A/CN.9/XXIX/CRP.2/Add.2)

34. Ms. BOSS (United States of America) suggested that in article 11, paragraph 4 (a), the word "both" should be inserted between the words "when" and "the addressee" and that the words "provided that" should be deleted and be replaced by the word "and".

35. Mr. SORIEUL (International Trade Law Branch) suggested that the word "both" should be inserted between the words "as" and "received" and that the clause after the word "originator" should be deleted and replaced with the words "and had reasonable time to act accordingly; or".

36. Ms. BOSS (United States of America) endorsed the amendment.

37. Article 11, as amended, was adopted.

Article 12 (A/CN.9/XXIX/CRP.2)

38. Mr. SORIEUL (International Trade Law Branch) said that the Commission needed to decide whether to include the words "the addressee's", which appeared in square brackets in paragraph 5.

39. Ms. BOSS (United States of America) said that it was unnecessary to include the words in square brackets because they merely repeated the definition contained in paragraph 2 (a).

40. Ms. SABO (Observer for Canada) agreed that the words in square brackets could be deleted.

41. Article 12, as amended, was adopted.

Article 14 (A/CN.9/XXIX/CRP.2/Add.1 and Add.5)

42. Mr. SORIEUL (International Trade Law Branch) said that the text of the article as contained in document A/CN.9/XXIX/CRP.2/Add.1 had been amended; the amended version appeared in document A/CN.9/XXIX/CRP.2/Add.5.

43. Article 14, as amended, was adopted.

Article 16 (A/CN.9/XXIX/CRP.2/Add.4)

44. Article 16 was adopted.

Article 17 (A/CN.9/XXIX/CRP.2/Add.4 and Add.5)

45. Mr. SORIEUL (International Trade Law Branch) said that paragraph 6 appeared in square brackets in document A/CN.9/XXIX/CRP.2/Add.4 because the Commission had not completed its consideration of that paragraph. In document A/CN.9/XXIX/CRP.2/Add.5, paragraph 5 was the new text of what had been paragraph 3, and paragraph 6 was repeated because of the inversion of paragraphs 5 and 6.

46. Ms. CRAGGS (United Kingdom) said she had been advised that her Government could not accept the last line of paragraph 3.

47. Mr. BURMAN (United States of America) said that paragraph 3 had been worked out after lengthy consideration; he strongly urged that no further changes should be made to it.

48. Ms. SABO (Observer for Canada) suggested that the words "in transferring rights" should be added at the end of paragraph 3.

49. Mr. RENGER (Germany) said that his delegation had no problem with the Canadian proposal. However, it could not accept the idea that the Commission might not be able to complete its work on the Model Law; many compromises had been made, and now one delegation was holding up the adoption of the Model Law.

50. Mr. BURMAN (United States of America) said that his delegation did not feel that the Canadian proposal was necessary. The paragraph should be left as it stood.

51. Ms. CRAGGS (United Kingdom) said that her delegation had no intention of holding up the Commission's work and was well aware of all the time and effort that had gone into drafting the Model Law. However, if the Commission adopted the Model Law, her delegation would have to place on record its opposition to the inclusion of the word "unique" in article 17, paragraph 3.

The meeting rose at 6 p.m.